

**EXHIBIT 47**

**In Re:**  
*ONEWEB GLOBAL LIMITED, et al.*  
*Main Case No. 20-22437-rdd*

---

*July 28, 2020*

---

*eScribers, LLC*  
*(973) 406-2250*  
*operations@escribers.net*  
*www.escribers.net*

*To purchase copies of this transcript, please contact us by phone or email*



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

UNITED STATES BANKRUPTCY COURT

SOUTHERN DISTRICT OF NEW YORK

- - - - -x

In the Matter of:

ONEWEB GLOBAL LIMITED, et al.,	Main Case No.
Debtors.	20-22437-rdd

- - - - -x

United States Bankruptcy Court  
300 Quarropas Street  
White Plains, New York

July 28, 2020  
1:04 PM

B E F O R E:

HON. ROBERT D. DRAIN  
U.S. BANKRUPTCY JUDGE

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Notice of Agenda for Matters Scheduled for July 28, 2020, at  
1:00 PM

Motion to Extend Time / Notice of Debtors' Motion to Extend the  
Debtors' Exclusive Periods to File a Chapter 11 Plan and  
Solicit Acceptances Thereof Pursuant to Section 1121 of the  
Bankruptcy Code (ECF #395)

Official Committee of Unsecured Creditors' Limited Objection to  
Debtors' Motion to Extend Debtors' Exclusive Periods to file a  
Chapter 11 Plan and Solicit Acceptances Thereof Pursuant to  
Section 1121 of the Bankruptcy Code (related document(s)395)  
filed by Luc A. Despins on behalf of Official Committee of  
Unsecured Creditors (ECF 419)

Debtors' Reply to the Committee's Objection to the Motion To  
Extend Their Exclusive Periods to File a Chapter 11 Plan and  
Solicit Acceptances Thereof (related document(s)395, 419) filed  
by Lauren C. Doyle on behalf of OneWeb Global Limited (ECF  
#440)

Motion for Order Granting Committee Derivative Standing to  
Pursue and, if Appropriate, Settle Claims for  
Recharacterization and Equitable Subordination Against Certain

Purported Secured Creditors, and (II) Objection to Such  
Creditors' Claims (related document(s)402)

Softbank Group Corp.'s Objection to the Official Committee of  
Unsecured Creditors' (I) Motion for Order Granting Committee  
Derivative Standing to Pursue, and if Appropriate, Settle  
Claims for Recharacterization and Equitable Subordination  
Against Certain Purported Secured Creditors, and (II) Objection  
to Such Creditors' Claims (related document(s)402) filed by  
Gary S. Lee on behalf of SoftBank Group Corporation (ECF #427)

Joinder and Supplemental Memorandum of Law in Opposition to the  
Official Committee Of Unsecured Creditors' (I) Motion For Order  
Granting Committee Derivative Standing to Pursue and, if  
Appropriate, Settle Claims for Recharacterization and Equitable  
Subordination Against Certain Purported Secured Creditors and  
(Ii) Objection to Such Creditors' Claims (related  
document(s)402) filed by Timothy Q. Karcher on behalf of Grupo  
Elektra S.A.B. de C.V. (ECF #428)

Joinder of Airbus Group Proj B.V. to the Softbank Group Corp.'s  
Objection to the Official Committee of Unsecured Creditors' (I)  
Motion for Order Granting Committee Derivative Standing to  
Pursue and, if Appropriate, Settle Claims for

Recharacterization and Equitable Subordination Against Certain  
Purported Secured Creditors, and (II) Objection to Such  
Creditors' Claims (related document(s)402, 427) filed by  
Michael C. Hefter on behalf of Airbus Group Proj B.V. (ECF  
#429)

Debtors' Objection to the Official Committee of Unsecured  
Creditors' (I) Motion for Order Granting Committee Derivative  
Standing to Pursue, and if Appropriate, Settle Claims for  
Recharacterization and Equitable Subordination Against Certain  
Purported Secured Creditors, and (II) Objection to Such  
Creditors' Claims (related document(s)402) filed by Lauren C.  
Doyle on behalf of OneWeb Global Limited (ECF 430)

Joinder of Qualcomm Technologies, Inc. and Qualcomm Global  
Trading PTE. Ltd to the Debtors' and Softbank Group Corp.'s  
Objections to the Official Committee of Unsecured Creditors'  
Motion for Derivative Standing to Pursue Recharacterization and  
Subordination of Certain Secured Creditors' Claims and  
Objections Thereto (related document(s)402, 430, 427) filed by  
Rachel Ehrlich Albanese on behalf of Qualcomm Technologies,  
Inc. and Qualcomm Global Trading Pte. Ltd. (ECF #440)

Official Committee of Unsecured Creditors' Motion for an Order

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

Authorizing the Committee to Exceed the Page Limit for the  
Committee's Reply in Support of Motion for Order Granting  
Committee Derivative Standing to Pursue and, if Appropriate,  
Settle Claims for Recharacterization and Equitable  
Subordination against Certain Purported Secured Creditors filed  
by Luc A. Despins on behalf of Official Committee of Unsecured  
Creditors (ECF #422)

Official Committee of Unsecured Creditors' Reply in Support of  
Motion for Order Granting Committee Derivative Standing to  
Pursue and, if Appropriate, Settle Claims for  
Recharacterization and Equitable Subordination against Certain  
Purported Secured Creditors (related document(s)402) filed by  
Luc A. Despins on behalf of Official Committee of Unsecured  
Creditors (ECF #445)

Transcribed by: Linda Ferrara  
eScribers, LLC  
352 Seventh Avenue, Suite #604  
New York, NY 10001  
(973)406-2250  
operations@escribers.net

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

A P P E A R A N C E S (TELEPHONICALLY):

MILBANK LLP

Attorneys for Debtors  
55 Hudson Yards  
New York, NY 10001

BY: TYSON LOMAZOW, ESQ.  
BRIAN KINNEY, ESQ.  
LAUREN C. DOYLE, ESQ.

MILBANK LLP

Attorneys for Debtors  
1850 K Street, NW  
Suite 1100  
Washington, DC 20006

BY: ANDREW M. LEBLANC, ESQ.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PAUL HASTINGS LLP  
Attorneys for Official Creditors' Committee  
200 Park Avenue  
New York, NY 10166

BY: LUC A. DESPINS, ESQ.

PAUL HASTINGS LLP  
Attorneys for Official Creditors' Committee  
2050 M Street NW  
Washington, DC 20036

BY: NICHOLAS A. BASSETT, ESQ.

MORRISON & FOERSTER LLP  
Attorneys for SoftBank Group Corporation  
250 West 55th Street  
New York, NY 10019

BY: DAVID J. FIOCCOLA, ESQ.  
GARY S. LEE, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

PROSKAUER ROSE LLP

Attorneys for Grupo Elektra  
11 Times Square  
New York, NY 10036

BY: TIMOTHY Q. KARCHER, ESQ.  
CARLOS E. MARTINEZ, ESQ.  
SETH FIUR, ESQ.

COLE SCHOTZ P.C.

Attorneys for the Official Committee of Unsecured  
Creditors  
1325 Avenue of the Americas  
19th Floor  
New York, NY 10019

BY: NOLAN E. SHANAHAN, ESQ.  
SETH VAN AALTEN, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

HOGAN LOVELLS US LLP  
Attorneys for Airbus DS Satnet LLC and Airbus Group  
Proj B.V.  
390 Madison Avenue  
New York, NY 10017  
  
BY: CHRISTOPHER (CHRIS) R. BRYANT, ESQ.  
MICHAEL HEFTER, ESQ.  
  
CRAVATH, SWAINE & MOORE LLP  
Attorneys for Gharti Global Ltd.  
825 Eighth Avenue  
New York, NY 10019  
  
BY: PAUL H. ZUMBRO, ESQ.  
  
HUGHES HUBBARD & REED LLP  
Attorneys for Airbus OneWeb Satellites LLC  
One Battery Park Plaza  
New York, NY 10004  
  
BY: JEFFREY S. MARGOLIN, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

WEIL, GOTSHAL & MANGES LLP

Attorneys for HMG

767 Fifth Avenue

New York, NY 10153

BY: GABRIEL A. MORGAN, ESQ.

GARRETT FAIL, ESQ.

ANTHONY L. GREENE, ESQ.

DLA PIPER LLP (US)

Attorneys for Qualcomm

2000 Avenue of the Stars

Suite 400 North Tower

Los Angeles, CA 90067

BY: ERIC GOLDBERG, ESQ.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

TOGUT, SEGAL & SEGAL LLP

Attorneys for Kongsberg Satellite Services AS (KSAT)

One Penn Plaza

Suite 3335

New York, NY 10119

BY: NEIL BERGER, ESQ.

ALBERT TOGUT, ESQ.

UNITED STATES DEPARTMENT OF JUSTICE

Office of the United States Trustee

201 Varick Street

Suite 1006

New York, NY 10014

BY: RICHARD C. MORRISSEY, ESQ.

1 the time period that we agreed to.

2 THE COURT: Okay. All right. Okay, anyone else in  
3 objection to the motion? Okay, Mr. Despins, just briefly, if  
4 you want to say something.

5 MR. DESPINS: Yeah, I'll try to cover a lot of stuff.  
6 I'll start from what was just covered, so that it's fresh in  
7 your memory. First of all, the document we quoted from is not  
8 post-bankruptcy. It was February, and it clearly shows that  
9 the important thing for them was that the form was always  
10 something that showed a loan. And that that was their goal,  
11 and that's why we cited it.

12 And I'm not going to address the discovery thing,  
13 other than to say we had no ability to test whether the  
14 discovery was complete because of when it was produced. And it  
15 was clearly in violation of the court order.

16 In terms of the Yoga case, it's true that Judge Wiles  
17 said that. But the point is that that seems to basically go to  
18 the issue that the subjective belief of a party is what  
19 controls here. And there's nothing further from what the  
20 analysis should be. It can't be that.

21 Then the point about the maturity being in 2023,  
22 that's true, but the point is that the fuel they're providing  
23 for the plane could not get them to that point and could not  
24 get them to a point where any revenues would occur. That's the  
25 key. We're not asking for a bright-line test that you cannot

1 finance a startup. There's just so many differentiating  
2 factors here that make it not applicable.

3 Now, the issue of control by SoftBank, they say oh,  
4 look, we had this side letter with the Mexican lender. And by  
5 the way, it's not an accident that it was Banco Azteca that was  
6 put in there. It was all controlled by the same people at  
7 Salinas and decided to put that entity. But it has nothing to  
8 do with it being a bank or anything like that.

9 Now, the issue of SoftBank being in control and no,  
10 that's not the case because there was a side letter. So now  
11 they're telling you there's two side letters. That leaves  
12 three lenders that don't have the side letters. And by the  
13 way, Your Honor, I know you'll look at this. The side letter  
14 doesn't do any good for them. And it's true, it says you can't  
15 exchange principal and all that, but it does not govern  
16 remedies.

17 Remedies are governed by SoftBank. So SoftBank, they  
18 can be in default, the money is due, they control the exercise  
19 of remedies. And these guys did not cover that, and that shows  
20 the point is that SoftBank is in complete control of that. And  
21 you would never have a lender put another lender in complete  
22 control of remedies when you're in full default.

23 The issue of -- now, let me now go to Mr. LeBlanc's  
24 point. Your Honor, we tried to be nice about this. But there  
25 are huge corporate-governance issues here. This is rife with

1 conflict. Mr. LeBlanc said he wasn't clear whether the four  
2 million and change was approved at the same time as the DIP.  
3 I'm sure they were discussing the DIP at that time, let's not  
4 kid ourselves, because that's two days before the filing.

5 And two, at that time, or soon thereafter, they're  
6 discussing the KEIP, and SoftBank negotiated the KEIP, and of  
7 course, now we know that they're getting -- that the debtors  
8 are giving them a release as part of the plan support  
9 agreement. It's basically a group scratching each other's  
10 backs, and that should be very troubling with the Court. It's  
11 all linked. It's all related.

12 The whole argument about highly damaging, the parade  
13 of horrors, is not accurate. The ninety million is fully  
14 protected, meaning that the bidder cannot do anything about  
15 that. That money is gone, as you said.

16 As to the hundred million dollars, again, we would  
17 cross that bridge if and when we get to it. The fact that you  
18 authorized us to recharacterize or to attempt to recharacterize  
19 1.7 billion dollars of debt does not address remedies.  
20 Remedies can be addressed later.

21 Now, I want to address where I think you're heading,  
22 Your Honor, which is the issue of the assumption of contracts,  
23 right? If everyone's contracts were assumed, this issue might,  
24 in theory, go away. First of all, I don't believe that for a  
25 second that it will happen, but not only that, but it's going



1 to be too late. They're doing this five days before  
2 confirmation. And it is true that in a normal cooperative  
3 environment you would try to say hey, let's wait for the bar  
4 date. Let's analyze the claims. You would do that jointly,  
5 and there would be a joint effort. But that's not what's  
6 happening here. I guarantee you, they will try to jam the  
7 committee so that the committee, for example, will cease to  
8 exist on the petition date, so therefore cannot be a plaintiff  
9 anymore. Not petition date. On the confirmation date or the  
10 effective date. So it cannot be a plaintiff anymore.

11 There'll be no funding. There'll be tons of  
12 roadblocks that they will put in, which forces us to push the  
13 issue today. But I can see that you're reluctant, and I can --  
14 I, sort of, see that, and it makes sense if, in fact, there was  
15 a way to protect the committee, protect the creditors, so they  
16 can see what's behind the curtain, whether it's real or not.

17 At the end of the day, I believe there'll be at least  
18 twenty -- thirty million dollars of claims that are not being  
19 assumed by the buyer. So the question is, Mr. Leblanc is  
20 basically saying well, just too bad for these people. We'll  
21 just let them go. The committee cannot do that. That would be  
22 inappropriate. And on the facts here, where you have this  
23 hopelessly conflicted group of people, it cannot be the result.  
24 And we hope Your Honor is sensitive to that.

25 And I just want to end by saying that we're not trying

1 to establish a bright-line test that says that startup  
2 financing isn't possible, but the facts here are just so  
3 compelling that we believe that there will be no impact,  
4 practically, on startup financing.

5 Thank you, Your Honor.

6 THE COURT: Okay. All right. I have before me the  
7 official unsecured creditors' committee's motion to be accorded  
8 standing to pursue, on a derivative basis, and, if appropriate,  
9 settle claims against the defendants in a proposed complaint  
10 that's attached to the motion for recharacterization of the  
11 defendants secured claims in these bankruptcy cases to equity  
12 under federal law and/or alternatively, to equitably  
13 subordinate the claims to the claims of the general unsecured  
14 creditors under Section 510(c) of the Bankruptcy Code.

15 I should note that the motion also includes a request,  
16 then on the basis of the complaint, although it needn't be on a  
17 complaint necessarily, for an order disallowing the defendants'  
18 claims under Section 502(b) of the Bankruptcy Code, again, on  
19 the grounds that they are equity interests.

20 This is a topic, this latter point, that has not been  
21 addressed, as far as I can tell, above the bankruptcy court  
22 level, and I don't think, in the Southern District of New York.  
23 To the extent it has been addressed at all, most of the time  
24 it's addressed in the context of the proper standard for a  
25 recharacterization motion, i.e. whether the motion or the

1 adversary proceeding should be considered under Section 105 of  
2 the Bankruptcy Code, or alternatively, under Section 502(b) of  
3 the Bankruptcy Code, the distinction being the case, in most  
4 courts' analysis, if disallowance is being pursued under  
5 Section 502(b), the analysis might well be under applicable  
6 nonbankruptcy law, i.e. state law in most instances.

7           Most courts have concluded that the proper analysis is  
8 under 105(a) generally and is not focused on the fact that  
9 there are two options under the Bankruptcy Code. They have  
10 just said that if someone is seeking recharacterization, and  
11 they say they want to do it under Section 105, they can. See  
12 *In re Alternate Fuels, Inc.*, 789 F.3d 1139, 1147-1149 (10th  
13 Cir. 2015).

14           On the other hand, the authorities that I've located  
15 that deal with the standing issue under Section 502(b) have  
16 made it clear, and I agree with them, that there's no  
17 limitation on a parties-in-interest's standing, except a  
18 constitutional limitation, i.e. that they are the party  
19 aggrieved to pursue recharacterization under Section 502(b) of  
20 the Bankruptcy Code as part of a claim objection. See *In re*  
21 *Tara Retail Group, LLC*, 595 B.R. 215, 222-223 (Bankr. N.D.W.  
22 Va. 2018). *United States v. State Street Bank & Trust Co.*, 520  
23 B.R. 29, 72 (Bankr. D. Del. 2014). And *In re Brooke Capital*  
24 *Corp*, 2011 Bankr. LEXIS 210, at \*23 (Bankr. D. Kan. Jan. 20,  
25 2011).

1           A court does have other means to control its calendar  
2 and to try to ensure that litigation is not pursued by parties  
3 that are acting as a fiduciary and/or being paid by the estate  
4 separate and apart from standing, and conceivably that applies  
5 here with regard to the 502(b) portion of the relief sought by  
6 the committee, but it's not a standing issue or an issue that  
7 pertains to standing.

8           No objecting party has objected to that portion of the  
9 committee's request. I think the reason is obvious. There's  
10 no basis to object on a standing ground.

11           So at some level, the arguments over standing are,  
12 although, perhaps, important for the course of this case, kind  
13 of, in a very strict sense, not dispositive here. I'll keep  
14 that in mind with regard to my ruling on standing.

15           But turning to the motion's request to obtain  
16 standing, under the case law in the Second Circuit there are  
17 two basic scenarios in which a creditors' committee or another  
18 party-in-interest can obtain standing to pursue claims on  
19 behalf of the bankruptcy estate. One is where the debtor  
20 consents to a third party bringing suit, which, of course, is  
21 not applicable here, and the other is when the debtor-in-  
22 possession unjustifiably refuses to bring an action against  
23 some third party. See, for example, *In re STN Enterprises*, 779  
24 F.2d 901, (2d Cir. 1985) and the trio of cases following it,  
25 including *In re Adelpia Communications Corp.*, 544 F.3d 420,

1 424 (2d Cir. 2008).

2 Fiduciary considerations are of the utmost importance  
3 in considering expanding standing to someone beyond the initial  
4 and primary fiduciary for debtors' estate, namely the debtor-  
5 in-possession. The Second Circuit has recognized, though, that  
6 there are times when a debtor-in-possession may not always  
7 fulfill its responsibilities and may unjustifiably fail to  
8 bring valid claims or abuse its discretion by not suing. *Id.*  
9 544 F.3d 424.

10 The court went on to say, however, it is the court's  
11 role and not that of a derivative plaintiff both to oversee the  
12 litigation and to check any potential for abuse by the parties,  
13 i.e. the court has to make ultimately a decision whether, in  
14 exercising its fiduciary duties, the debtor is acting properly  
15 in not bringing litigation. And the flip side, the third party  
16 would not be a good steward of the estate's resources in  
17 bringing litigation, or to the contrary, the debtor is  
18 unjustifiably, in light of its fiduciary duties, refusing to  
19 bring the litigation, and the requesting plaintiff is, in fact,  
20 or would, in fact, act as a proper fiduciary.

21 The standard to evaluate a standing motion in the  
22 Second Circuit is well established. Again, it goes back to the  
23 seminal case *In re STN Enterprises*. Here, "if the committee  
24 presents a colorable claim or claims for relief that on  
25 appropriate proof would support a recovery, the court's

1 threshold inquiry will not be at an end. In order to decide  
2 whether the debtor unjustifiably failed to bring suit so as to  
3 give the creditors' committee standing to bring an action, the  
4 court must also examine, on affidavit and other submission, by  
5 evidentiary hearing or otherwise, whether an action asserting  
6 such claim is likely to benefit the reorganization estate."

7 779 F.2d 905.

8 But the Court engages in an analysis in which it looks  
9 at whether there is a colorable claim that the committee wants  
10 to bring, that its pursuit of that claim is likely to benefit  
11 the estate and to the extent the inquiry isn't subsumed in that  
12 second factor, whether the trustee or debtor-in-possession has  
13 unjustifiably failed to pursue it.

14 The quantum of proof is flexible for such an analysis.  
15 Clearly the Second Circuit in STN acknowledged that the court  
16 may properly engage in some review of disputed facts to  
17 determine if there is proper factual support for the allegation  
18 and to determine if the proposed litigation would be a sensible  
19 application of estate resources. See *In re Sabine Oil & Gas*  
20 *Corp.*, 562 B.R. 211, 222 (S.D.N.Y. 2016), and *In re Adelphia*  
21 *Communications Corp.*, 330 B.R. 364, 369 (Bankr. S.D.N.Y. 2005).

22 This does not require a minitrial, but as noted by the  
23 Circuit, the bankruptcy court should assure itself that there  
24 is a sufficient likelihood of success to justify the  
25 anticipated delay and expense to the bankruptcy estate that the

1 initiation and continuation of litigation would likely produce.  
2 In re STN, 779 F.2d 905, 906.

3 The first part of the analysis, that the claims be  
4 colorable, has been noted as a relatively easy one to make, In  
5 re Adelphia Communications Corp., 330 B.R. 376, and is often  
6 equated with the standard of considering a motion to dismiss.  
7 It's not necessarily limited to that consideration, however,  
8 particularly where the standing motion is raised early in a  
9 bankruptcy case, and there has not been the type of bankruptcy  
10 discovery under Rule 2004 that would normally inform a  
11 complaint in a Chapter 11 case of this nature.

12 We are relatively early in this Chapter 11 case. The  
13 committee, I guess it's had about a month to conduct discovery  
14 under Bankruptcy rule 2004, given the deadline it faced under  
15 the debtor-in-possession order from April. It has not taken  
16 depositions. It has obtained a fair amount of document  
17 discovery, but that discovery has pertained to at least two  
18 relatively complex, factually that is, determinations with  
19 respect to credit facilities that are the subject of the  
20 proposed complaint.

21 The objectors contend that under the applicable case  
22 law, which, at the Circuit level, is really outside of the  
23 Second Circuit and based on two leading cases. In re Submicron  
24 Systems Corp., 432 F.3d 448 (3d Cir. 2006) and In re Autostyle  
25 Plastics, Inc., 269 F.3d 726 (6th Cir. 2000), that on a motion

1 to dismiss or colorable claims analysis, that there is no  
2 colorable claim here for recharacterization or equitable  
3 subordination.

4 Courts in the Second Circuit at the district court and  
5 bankruptcy court level, and frankly, also in the Third Circuit,  
6 even after Submicron, often include an analysis of the so-  
7 called Autostyle factors for determining whether a debt claim  
8 should be recharacterized as equity.

9 The objectors here argue that the secured loans should  
10 clearly not be recharacterized on their merits, where the  
11 committee, applying the same basic analysis, contends that, at  
12 a minimum, they state colorable claims for purposes of the STN  
13 analysis.

14 Similarly, the parties disagree over whether the  
15 complaint separately sets forth a claim for equitable  
16 subordination under Section 510(c) of the Bankruptcy Code.  
17 Both of those causes of action seek essentially the same  
18 ultimate result, which is recharacterization of the loan  
19 transaction in a way that puts them behind general unsecured  
20 claims, but the tests are different, as noted by the Fourth  
21 Circuit In re Dornier Aviation (North America), Inc., 453 F.3d  
22 225, 232 (4th Cir. 2006).

23 Equitable subordination differs markedly and serves  
24 different purposes from recharacterization. While a bankruptcy  
25 court's recharacterization decision rests on the substance of